

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: Case No. 10-14731-scc  
Chapter 11  
2626 BROADWAY, LLC,  
Debtor. One Bowling Green  
New York, New York 10004  
Wednesday, February 16, 2011  
10:06 a.m.

TRANSCRIPT OF MOTION TO DISMISS AND SURRENDER PREMISES BEFORE  
THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Broadway Metro M. Teresa Daley Law Offices, PC  
Associates, L.P. By M. Teresa Daley, Esq.  
By Andrea J. Lawrence, Esq.  
520 8th Avenue, 24th Floor  
New York, New York 10018  
(212) 560-3943

For the Debtor, 2626 Robinson Brog Leinwand Green  
Broadway, LLC Genovese & Gluck, P.C.  
By Robert M. Sasloff, Esq.  
875 Third Avenue  
New York, New York 10022  
(212) 586-4050

Audio Operator: F. Ferguson

Transcription Service: Esquire  
One Penn Plaza, Suite 4715  
New York, New York 10119  
(212) 687-8010

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.



One Penn Plaza Suite 4715 New York, NY 10119  
212.687.8010  
www.esquiresolutions.com

An AlexanderGallo Company

1 (Time Noted: 10:06 a.m.)

2 THE COURT: All right, 2626 Broadway. Good  
3 morning.

4 MR. SASLOFF: Good morning, Your Honor.

5 MS. DALEY: Good morning, Your Honor.

6 THE COURT: Appearances?

7 MS. DALEY: M. Teresa Daley, M. Teresa Daley Law  
8 Offices, P.C., 520 8th Avenue, 20th Floor, New York, New  
9 York, for Broadway Metro.

10 THE COURT: All right, good morning, Ms. Daley.

11 MS. DALEY: Good morning.

12 MR. SASLOFF: Robert Sasloff from the firm of  
13 Robinson Brog Leinwand Greene Genovese & Gluck, we're counsel  
14 to the Debtor in this Chapter 11 case, Your Honor.

15 THE COURT: All right. What's the status?

16 MS. DALEY: Well, at this point, Your Honor,  
17 eviction was obtained on January 24th of 2011 and so they're  
18 out of possession.

19 THE COURT: Okay.

20 MS. DALEY: I believe that the adversary  
21 proceeding was remanded down to the State Court --

22 THE COURT: Correct.

23 MS. DALEY: -- so they're going back and forth on  
24 that, over that. And right now here at this time, our motion  
25 to dismiss for bad faith filing was still before Your Honor.

1 THE COURT: Was pending, okay.

2 MS. DALEY: And our issue here at this point is  
3 whether or not the Court would dismiss this bankruptcy, but  
4 with prejudice based upon the fact that the Debtor, since  
5 they filed last -- September 3, 2010 has done nothing other  
6 than park itself here, pretty much attempt to manipulate the  
7 various courts with the claims that they've had and the  
8 landlord continues to be damaged by everything that's  
9 happened here.

10 And, counsel for the Debtor had offered to just  
11 have -- to essentially a dismissal --

12 THE COURT: Right.

13 MS. DALEY: -- but the problem is, is that they  
14 won't consent to a dismissal with prejudice. We don't want  
15 to be faced with a situation where things start going bad in  
16 State Court and either Debtor or the Debtor's only principal,  
17 Mr. Soto, decides to come back again and file again so that  
18 they can park things here.

19 THE COURT: Well, what's -- in the State Court  
20 litigation, is Mr. Soto or the Debtor the plaintiff in the --

21 MS. DALEY: There's a State Court action --

22 THE COURT: There's a State Court action relating  
23 to the failed -- the allegedly failed Urban Outfitters  
24 transaction?

25 MS. DALEY: The tortious interference.

1 THE COURT: Tortious interference?

2 MS. DALEY: Yes. And we still have our action  
3 where we had started back in 2009 where that -- we haven't  
4 even done any discovery because they made applications to  
5 dismiss.

6 THE COURT: And that's an action for --

7 MS. DALEY: That was against the Debtor as well as  
8 Mr. Soto.

9 THE COURT: For?

10 MS. DALEY: For damages --

11 THE COURT: For monetary damages?

12 MS. DALEY: Correct. It was all monetary and on  
13 Mr. Soto's part is that he was a personal guarantor of the  
14 lease. So, that is going to proceed in the State Court to  
15 the extent that it can proceed.

16 THE COURT: Right.

17 MS. DALEY: Once a stay is vacated here letting us  
18 go back on that case because the stay was not vacated to the  
19 extent of permitting us to continue the prosecution of that  
20 case.

21 In fact, I think a decision came down from State  
22 Court based on a motion that was an old motion, their motion  
23 to dismiss I think back in September, but we haven't been  
24 able to do anything because of the stay that was imposed here  
25 and then they have the tortious interference case that's the

1 2626 B-way case against Broadway Metro that they're  
2 prosecuting.

3 THE COURT: Who are the parties in the action in  
4 which your client is the plaintiff?

5 MS. DALEY: 2626 B-way and John Soto.

6 THE COURT: Individually?

7 MS. DALEY: Correct.

8 THE COURT: Okay.

9 MS. DALEY: And I don't think there's anybody else  
10 but I don't want to swear to it because I don't have the  
11 actual caption in front of me, but those were the two main  
12 parties.

13 THE COURT: All right. Let me hear from Mr.  
14 Sasloff.

15 MR. SASLOFF: Thank you, Your Honor. You know,  
16 the Debtor is consenting to the dismissal of the case. We  
17 just do not believe that the circumstances of this case  
18 should require a dismissal with prejudice.

19 THE COURT: Why do you believe that?

20 MR. SASLOFF: This is the first time this Debtor  
21 has filed. Debtor has not been a serial filer and hasn't  
22 obstructed the landlord in this case beyond what a normal  
23 Debtor --

24 THE COURT: Hasn't?

25 MR. SASLOFF: Not in this case.

1 THE COURT: Let me refresh your recollection, all  
2 right? Let me refresh your recollection. We had a hearing  
3 early on in this case in which it was pointed out to your  
4 client that he was required to pay rent and he sat there  
5 right behind you and indicated that, in fact, he was going to  
6 pay rent within the sixty days and he did not.

7 MR. SASLOFF: What he indicated, Your Honor, was  
8 he understood that the requirements of the Code were that the  
9 company pay rent or there would be consequences. A business  
10 decision was made by Mr. Soto personally, as well as on  
11 behalf of the Debtor, to not put an additional \$100,000 into  
12 the case if he didn't think there was going to be a  
13 likelihood that in this case he'd be able to survive.

14 So, a business decision was made. Debtor used its  
15 business judgment not to do that and the consequence of that  
16 was that this Court rightfully lifted the stay on November  
17 22nd. That was --

18 THE COURT: Well, your recollection of that day  
19 and mine are different, but we can just leave it at that for  
20 now.

21 MR. SASLOFF: Well, Your Honor made it clear that  
22 if the Debtor -- there was a price to this Court, to get  
23 entrance into this Court, and that price was the rent and if  
24 the Debtor didn't pay the rent that he would suffer the  
25 consequences. He made the decision to suffer the

1 consequences. We let the stay be modified -- we consented to  
2 it at that point even, and then we did not fight the  
3 eviction. We did what we were supposed to do in this Court  
4 in the sense of once the Court ruled, we stood by that  
5 ruling.

6           The landlord now has possession of the property.  
7 I'm not certain that if, in a second filing, how they would  
8 be necessarily dragged back into this case if there was even  
9 a second filing because right now there's no Debtor. The  
10 Debtor's a shell with potential litigation that could go on  
11 for years.

12           I don't know what a dismissal with prejudice would  
13 do to the landlord in that circumstance except we're not  
14 going to try to remove a case -- nobody would try and remove  
15 a case that's in State Court that had already been removed  
16 and remanded once before.

17           THE COURT: What Ms. Daley is talking about, I  
18 think, is a circumstance where they get a judgment against  
19 the Debtor who's here now and they filed again.

20           MR. SASLOFF: But -- well, you know, companies can  
21 get a judgment, but without any assets the judgment doesn't  
22 mean anything, so I don't know what would a bankruptcy do for  
23 a company that's got a judgment against it especially if the  
24 only claim --

25           THE COURT: Okay, then let me turn that around on

1 you. Then what's the prejudice in my ordering a dismissal  
2 with prejudice if that's the case?

3 MR. SASLOFF: Prejudice -- this case doesn't  
4 warrant it. I mean --

5 THE COURT: Okay, so let's stay on that. Let's  
6 stay on this case. Nothing has been done in this case.  
7 Nothing. Operating reports, progress towards a plan --

8 MR. SASLOFF: We've not operated.

9 THE COURT: You've done nothing. There has never  
10 been any indication of any intent to prosecute this Chapter  
11 11 case. This was purely -- Mr. Sasloff, I don't have  
12 evidence, but I have eyes. This was purely a litigation  
13 tactic by your client. Pure and simple.

14 MR. SASLOFF: I'm not here denying whether it's a  
15 litigation tactic, but it was a litigation tactic that to the  
16 extent that we're here today, it's failed. The consequences  
17 of which the Debtor lost the property, lost possession of the  
18 property and all the Debtor is technically left with are  
19 actions against the landlord that the landlord is obviously  
20 going to vigorously defend.

21 THE COURT: But Chapter 11 is not supposed to be  
22 used as a litigation tactic. It's not. You're supposed to  
23 come to this Court with an intent to reorganize.

24 MR. SASLOFF: We did have the intent, Your Honor.  
25 We had a plan, not a plan of reorganization, which was not

1 able to get off the ground once we lost the first round.  
2 There was nothing left for us to do once we lost that first  
3 round with regard to what was going to happen to the case.  
4 The original idea was to come to the Bankruptcy Court, remove  
5 the action, prosecute the Urban Outfitters suit here, and if  
6 we were to be successful, use the proceeds of that litigation  
7 to fund the plan.

8           Once the Court remanded that action and lifted the  
9 stay, whatever plan we otherwise would have had fell by the  
10 wayside and failed. So, what were we supposed to do after  
11 that? We consented to the dismissal of this case two months  
12 ago. We didn't have to be here now. We only waited until  
13 now --

14           THE COURT: Right, you consented to this -- let's  
15 be clear. You consented to the dismissal of the case, but  
16 you wouldn't consent to the surrender of the premises. This  
17 could have all been very much shorter with the landlord  
18 incurring far less fees if your client had not persisted in  
19 using this Court as an instrument of its litigation tactics.

20           He was very -- once again, I remember him sitting  
21 there. He wanted to avail himself of his State Court rights  
22 and remedies, but yet, eventually the landlord got  
23 possession. So --

24           MR. SASLOFF: And the Debtor didn't play -- I  
25 mean, they also talked about whether or not when seeking

1 possession, the really believed that -- you know, one of the  
2 reasons why to keep the case open was to make sure the Debtor  
3 doesn't play any games with regard to that process and the  
4 Debtor didn't, Your Honor. The Debtor allowed that process  
5 to happen naturally. It didn't interfere with the warrant,  
6 it didn't interfere with the execution of the warrant, it  
7 didn't interfere with the actual eviction.

8 I think, Your Honor, when you stated correctly,  
9 you don't have the facts in this case that I believe really  
10 warrant a dismissal with prejudice. I think Your Honor may  
11 be right. You have a feeling. I mean, if it --

12 THE COURT: All right, then do you want to have an  
13 evidentiary hearing?

14 MR. SASLOFF: No, Your Honor. I just think the  
15 case should be dismissed. I don't think the landlord is  
16 going to be impacted one way or the other, even if there was  
17 a second bankruptcy.

18 THE COURT: If Ms. Daley wants a dismissal with  
19 prejudice, then she's entitled to an evidentiary hearing. If  
20 you want to go through that, we'll go through it. We could  
21 parse as between Ms. Daley -- my focus is on the Debtor. I  
22 think it would be a stretch for me to enter any sort of an  
23 order with respect to the principal.

24 MS. DALEY: If I may interject, Your Honor?

25 THE COURT: Please.

1 MS. DALEY: First of all, when the Debtor came in  
2 here, it had nothing to do with the prosecuting of the  
3 tortious interference.

4 THE COURT: I know that.

5 MS. DALEY: It was to avoid the eviction --

6 THE COURT: The eviction, absolutely.

7 MS. DALEY: -- and being served a notice of  
8 intention to evict. As far as counsel suggesting the Debtor  
9 did nothing after we left here to try to prevent the  
10 eviction, it's my understanding, although I did not see  
11 anything in black and white in written form that the Debtor  
12 applied to the appellate court in the state in order to try  
13 to get a stay, but the application initially wasn't either  
14 taken in or wasn't granted. So, that's one issue.

15 The other part of this is, Your Honor, is that  
16 under Section 1112, the clauses, the Court had issued an  
17 order early on in this case directing the Debtor to pay post-  
18 Petition use and occupancy and the Debtor flagrantly --

19 THE COURT: That's true.

20 MS. DALEY: -- violated the order. And there were  
21 no qualms he wasn't making any payments. So, that's even --

22 THE COURT: That's true, and I could have entered  
23 -- we could have gone down that path and I could have entered  
24 a contempt order against him personally, I believe, but we  
25 didn't do that.

1 MR. SASLOFF: I do not believe that's true, Your  
2 Honor. The Court didn't issue an order, but made a directive  
3 from the bench and didn't so order. It's not in the order.  
4 But Your Honor said that that's the price to pay and if you  
5 don't pay, you don't get the stay. We understood that. The  
6 Debtor didn't just --

7 THE COURT: Look, if we go down this path, then  
8 we're going to, you know, we're going to look at the  
9 transcripts because we're going to have to take a very close  
10 look at what the representations were because I think it has  
11 a bearing on what you're saying.

12 And, I have no evidence before me, but I do have  
13 my vivid recollection of the various twists and turns in this  
14 case and this conduct of this Debtor was the essence of not  
15 what a Chapter 11 Debtor is supposed to look like.

16 And, you know, you're telling me why do we need  
17 with prejudice, he doesn't have any assets anyway. Well,  
18 that's the classic, you know, standoff between two lawyers.  
19 One wants something and the other one says, you know, but it  
20 doesn't mean anything, and then the other one says, so then  
21 why don't you just give it to me?

22 MR. SASLOFF: But that's essentially right, Your  
23 Honor. That's what we're stuck with is they want -- and they  
24 wanted us out, the guy is out. They want a dismissal. The  
25 case is appropriate for dismissal. There's no --

1 THE COURT: All right, but what your client wants  
2 is basically "never mind, sorry, pretend I wasn't here at  
3 all." No, your case wants to leave here without there being  
4 any consequences to its actions. That's what it wants.

5 MR. SASLOFF: No, Your Honor, respectfully I  
6 disagree because there has been consequences to his actions.  
7 He lost possession of the property.

8 THE COURT: No, that's not a consequence of his  
9 action. That's the operation of the law. The consequence to  
10 his actions would be our pursuing an inquiry as to whether or  
11 not there was a filing in bad faith and whether or not there  
12 is relief that should be granted if there's such a finding.

13 The relief could include a dismissal with -- a  
14 order of dismissal with a prohibition against filing for a  
15 period of time. Ms. Daley's going to argue that that could  
16 be extended to him as the principal. There could be legal  
17 fees, which have not been asked for yet.

18 But there are consequences. There are  
19 consequences to actions and your client doesn't -- believes  
20 that he's immune from that.

21 MR. SASLOFF: No, Your Honor. I'm sorry, but the  
22 record is clear that that's not true. The record is clear  
23 that the client understood there were consequences and rather  
24 than put more money after bad, he was prepared to suffer  
25 those consequences.

1           His whole litigation, including the State Court  
2 cases that's still pending, in my opinion, are still based  
3 upon a lease which he now has lost. I don't know if any of  
4 the actions will survive that mere fact. In my opinion, they  
5 won't. He still thinks with his other counsel that they'll  
6 still have --

7           THE COURT: But that was another one of the --

8           MR. SASLOFF: But that was the consequence.

9           THE COURT: But that was another one of the  
10 interesting little moves that was made here because, first,  
11 we had the discussion about paying rent, okay. Then we had  
12 the discussion about 365(d)(4) and whether or not he would  
13 assume or reject and because the landlord took the position  
14 that the lease was terminated pre-Petition, then, in that  
15 narrow a circumstance, your client said, well, there's  
16 nothing to assume or reject.

17           So, he clearly wanted to have it both ways. When  
18 it was convenient --

19           MR. SASLOFF: We didn't say there was nothing to  
20 assume or reject. We still believe there was something to  
21 assume or reject, but it would have cost him \$100,000 and  
22 that just was -- it would have had to come from the principal  
23 himself or from other sources he would have raised, and on a  
24 business judgment basis, he couldn't justify that expenditure  
25 when, in his opinion, he felt that he wasn't going to get

1 that relief in this Court.

2 So, he made the business decision to not pay the  
3 money, to suffer the consequences, to lose the property which  
4 will have whatever affect it has on all of his other  
5 litigations. I think that they're fatal, those litigations,  
6 but that's my humble opinion. But I think that's the  
7 consequence of filing the case.

8 I mean, he came here for specific relief. He  
9 didn't get the relief he wanted. He has now suffered, and  
10 now we're saying fine, he suffered it; it didn't work. The  
11 case should be dismissed. There's no necessarily any real  
12 reason for a dismissal with prejudice especially since I do  
13 not believe that in a second filing, and I don't think the  
14 landlord can really state how a second filing would affect  
15 the landlord who already has the property.

16 The litigations are either the Debtor as  
17 plaintiff, which we're not removing to this Court --

18 THE COURT: The Debtor represented, I believe and  
19 I'm not sure on this point, but the Debtor represented that  
20 he -- there were other things that he was going to reorganize  
21 around. So, to the extent that there's any notion that there  
22 are assets and if the landlord gets a monetary judgment, the  
23 landlord's seeking to prevent the loss of the ability to  
24 execute on that judgment.

25 MR. SASLOFF: The other things that had the -- its

1 believed to reorganize around was the other actions against  
2 the landlord, which they have an appeal in the original  
3 *Yellowstone* that the Debtor was denied a *Yellowstone*  
4 injunction and that if he could overturn that decision, in  
5 their opinion, that would undo the termination of the lease  
6 as in that action.

7           There is the Urban Outfitters lawsuit and there is  
8 the damage claim. The main asset to have was the sale of the  
9 -- excuse me, Your Honor. Under the original lease, there  
10 was a provision that the Debtor had the ability to buy the  
11 building. The Debtor had exercised that option in its  
12 opinion. The landlord -- I'm not quite sure -- rejected that  
13 option and there is litigation with regard to that as well.  
14 The Debtor if it had the ability to buy the building was, I  
15 think, going to flip the building for a profit.

16           So, the other assets that this Debtor relate again  
17 to the landlord and there are actions where the Debtor is  
18 plaintiff which would be -- nobody in their right mind would  
19 be removing to this Court at this point.

20           THE COURT: I'm going to dismiss the case one way  
21 or the other. It's just a question --

22           MR. SASLOFF: I was talking in the second filing,  
23 Your Honor. I'm trying to think of what -- how this landlord  
24 would be affected on the second filing. I just don't see how  
25 they would be affected in the second filing and if they get a

1 judgment, nobody's going to file an 11 for a Debtor with no  
2 assets and no hope of assets to reorganize around trying to  
3 undo a judgment.

4 If they file a 7, that's a completely different  
5 story and that just means that a trustee would be appointed.

6 THE COURT: So, then why are you opposing a  
7 prohibition against filing an 11?

8 MR. SASLOFF: It's a matter of principle, Your  
9 Honor. I do not believe that this case warrants a dismissal  
10 with prejudice.

11 THE COURT: With all due respect to you, Mr.  
12 Sasloff, I find that an extraordinary statement. That you  
13 are standing there telling me as a matter of principle, I  
14 ought to do something for this Debtor -- as a matter of  
15 principle.

16 MR. SASLOFF: I'm not asking you to do anything  
17 for the Debtor. I'm just saying that this case on its record  
18 doesn't necessarily --

19 THE COURT: This case has no record. There was no  
20 record of prosecuting this case as a Chapter 11. None.

21 MR. SASLOFF: But that doesn't necessarily require  
22 a dismissal with prejudice. I mean, Your Honor, you've been  
23 in this -- you've been before this Court, on this Court.  
24 You've seen lots of cases where cases don't work out and most  
25 of them don't get dismissed with prejudice.

1 I mean, I've been here for 20 years and I've only  
2 had two cases --

3 THE COURT: There's "it doesn't work out" and  
4 there's purposeful conduct.

5 MR. SASLOFF: Your Honor, we filed this case in  
6 September or October.

7 THE COURT: Yes.

8 MR. SASLOFF: There was purposeful action in that  
9 first month. We lost. Once we lost, there was nothing left  
10 for us to do. We've only been waiting for the landlord's  
11 eviction for this case to be dismissed. I would have  
12 dismissed this case two months ago. I was done in December,  
13 but we're in February now because --

14 THE COURT: The moment that your client made the  
15 "business decision" as you put it, the business decision to  
16 not pay the rent, why did he not turn the keys over to the  
17 landlord?

18 MR. SASLOFF: Because he didn't -- he wasn't  
19 required to.

20 THE COURT: As a matter of principle?

21 MR. SASLOFF: He's not required to. Under the  
22 law, as a matter of principle, he's only --

23 THE COURT: If he was acting in good faith --

24 MR. SASLOFF: Your Honor, there were discussions  
25 about the circumstances for a peaceful surrender that didn't

1 go -- that didn't happen. The Debtor was prepared under  
2 certain circumstances to do that. That didn't happen.

3           You know, you can't just always ask and expect to  
4 get without doing something in return. If we couldn't do it  
5 in a manner that was agreeable to both parties, the operation  
6 of the law would work, it did work. Everybody got what they  
7 originally wanted. The landlord got possession. It didn't  
8 have to do much more other than what it wanted to do which  
9 was always to go back to State Court to get the warrant  
10 issued, to execute the warrant.

11           I was not aware of any application to any  
12 appellate court for a stay of the eviction.

13           THE COURT: But the Debtor could have handed the  
14 keys over and enabled the landlord to prevent incurring  
15 additional costs and it made a decision to not do that. Your  
16 client undoubtedly wanted something that the landlord wasn't  
17 willing to give it.

18           So, look, I don't have a record, so Ms. Daley, if  
19 you want to come back and have an evidentiary hearing, if  
20 he's not willing to agree on a dismissal with prejudice with  
21 respect to the Debtor for a period of time, I'll have an  
22 evidentiary hearing.

23           MS. DALEY: There were subpoenas that were issued  
24 way back when we first made the motion. I think one of the  
25 subpoenas was directed against Mr. Soto. Those subpoenas

1 were supposed to be --

2 THE COURT: I mean, Mr. Sasloff, how can I not --  
3 if she wants an evidentiary hearing, how can I deny her that?

4 MR. SASLOFF: I don't believe you could.

5 THE COURT: I'm just asking you.

6 MR. SASLOFF: I don't think you could. I mean,  
7 Your Honor could -- I take that back. Your Honor could just  
8 say that we don't need an evidentiary hearing, "I'm going to  
9 dismiss the case. If he files again, it's going to come back  
10 to this Court and there's going to be severe consequences."

11 THE COURT: Well, no, but he could, you know, I  
12 see a lot of creative things done here, okay, and there could  
13 be a filing somewhere else that wouldn't necessarily come  
14 back to me, okay? Lots of creativity.

15 MR. SASLOFF: I would have no doubt that the  
16 landlord or landlord counsel would find a way to make sure it  
17 came back to you if this Debtor filed anywhere.

18 THE COURT: I have no -- I'm just trying to uphold  
19 the law. That's my job.

20 MR. SASLOFF: And I think so are the -- both  
21 parties, Your Honor. I'm not criticizing the landlord's  
22 counsel for wanting something more than what they should  
23 otherwise be entitled to. What I'm saying is that --

24 THE COURT: No, she's just -- not what she should  
25 otherwise be entitled to. She wants something that she

1 believes she is entitled to.

2 MR. SASLOFF: And we believe that the landlord is  
3 not entitled to a dismissal with prejudice, especially since  
4 there's no second filing that would impact the landlord. So  
5 why --

6 THE COURT: You're telling me it's your position  
7 as a matter of principle and not as a matter of law.

8 MR. SASLOFF: Well, I think it's a matter of law.  
9 There's no basis for a dismissal with prejudice either, but  
10 I'm pursuing this -- look, my firm is already in the hole to  
11 this client and will not see a dime more from this client.  
12 That's our problem, not their problem.

13 So, I'm not here defending "the client." What I'm  
14 here defending is that a Debtor files a bankruptcy, it is  
15 unsuccessful, quickly unsuccessful with its case. It was  
16 prepared for dismissal. It consented to dismissal in  
17 November when Your Honor entered this stay order.

18 They may have even been able to get a dismissal  
19 with prejudice then. I think it was part of the discussions  
20 then to have a dismissal with prejudice.

21 THE COURT: And the reason they didn't do it was  
22 because there was a track record of your client frustrating  
23 their every move and that's why we kept it here.

24 MR. SASLOFF: Rightfully so. I agreed with that  
25 consequence.

1 THE COURT: And we kept it here to see the State  
2 Court process through and it could have been over then by  
3 handing the keys over.

4 MR. SASLOFF: Well, but the State Court process  
5 then went through its normal course --

6 THE COURT: All right, Ms. Daley, how long a  
7 prohibition do you want?

8 MS. DALEY: A long time.

9 THE COURT: How long? Blanket prohibition or a  
10 period of time?

11 MS. DALEY: I would like at least a year only  
12 because I can anticipate that what's going to happen --  
13 what's going to happen in State Court are all different  
14 things and the creativity factors that come into play and  
15 them trying to somehow, someway frustrate whatever we do over  
16 in the State Court because I mean, this has been from day one  
17 a dispute between two parties that should have never been  
18 brought here.

19 THE COURT: Right.

20 MS. DALEY: Okay, the other issue is the guaranty  
21 issue because I can see us getting a judgment in State Court,  
22 let's say on a summary judgment motion, and then trying to do  
23 something with that and then coming back here to put them in  
24 bankruptcy and then trying to preclude us on the guaranty  
25 action because I'm sure that there are going to be issues and

1 claims raised that why the guaranty should not be complied  
2 with.

3           So, I mean, I can see both the Debtor and Mr. Soto  
4 running back over here in order to continue to frustrate our  
5 every move in State Court and that's what my concern is.

6           THE COURT: All right, can I speak to the two of  
7 you off the record in chambers?

8           (Recess taken from 10:32 to 10:58 a.m.)

9           THE COURT: All right, Ms. Daley, so your request,  
10 just so I can be clear is for a dismiss with prejudice, but  
11 you also want -- your request is also that the order extend  
12 to the principal of the Debtor.

13           MS. DALEY: Yes, Your Honor.

14           THE COURT: Okay and Mr. Sasloff, is there  
15 anything else that you wish to add to the arguments that you  
16 made before we took the break?

17           MR. SASLOFF: No, Your Honor.

18           THE COURT: All right, well, I think we have, as I  
19 said earlier, I have a recollection of what occurred in this  
20 Court from the beginning of the case and even though an  
21 evidentiary record has not been created today, I think that I  
22 can take judicial notice of what occurred here before.

23           And, based on all the facts and circumstances in  
24 this case, I am going to enter an order dismissing this case  
25 with prejudice for 270 days. But that order, Ms. Daley, is

1 not going to extend to the principal of the Debtor because I  
2 don't think there's been a showing made in that regard.

3 So, with that, I think that that concludes all  
4 matters before me.

5 MS. DALEY: Does Your Honor want us to submit the  
6 order?

7 THE COURT: If you could work together and draft  
8 an order that's mutually acceptable and then just email it to  
9 chambers, although Mr. Schneiderman is moving onto bigger and  
10 better things on Friday, so if you could just send it to my  
11 chambers email or to Ms. Eisen, we'll get it entered as soon  
12 as you have it agreed to. All right, thank you both. Good  
13 luck.

14 MS. DALEY: Thank you very much Your Honor.

15 THE COURT: Thank you.

16 MS. DALEY: Just one other thing. The adversary  
17 proceeding, there were subpoenas issued, however the case was  
18 remanded to State Court. My request is that the subpoenas  
19 should fall based upon the remand and the dismissal of this  
20 Petition.

21 MR. SASLOFF: The subpoenas were in the main case,  
22 not the adversary, but if the case is dismissed --

23 THE COURT: Dismissed, then they go away -- are of  
24 no force and effect.

25 MS. DALEY: All right, we'll add something to the

1 order maybe? Do you have a problem with that?

2 THE COURT: I think you can have -- I think that  
3 can stand on this record as a representation between counsel  
4 and that you don't have to muddy the dismissal order with  
5 that.

6 MS. DALEY: Very good, Your Honor.

7 MR. SASLOFF: Thank you.

8 THE COURT: All right, thank you.

9 MS. DALEY: Thank you. Have a good day.

10 (Time noted: 11:00 a.m.)

11 \* \* \* \* \*

12

13 CERTIFICATE

14 I, RANDEL RAISON, certify that the foregoing is a  
15 correct transcript from the official electronic sound  
16 recording of the proceedings in the above-entitled matter, to  
17 the best of my ability.

18 *Randel Raison*

19 \_\_\_\_\_ July 18, 2011

20 Randel Raison

21

22

23

24

25